

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WALKER INTERNATIONAL HOLDINGS)	
LIMITED,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-MC-00156
)	
REPUBLIC OF THE CONGO,)	
)	
Defendant.)	

**CMS NOMEKO CONGO LLC'S REPLY IN SUPPORT OF ITS MOTION FOR
EXTENSION OF TIME TO RESPOND TO PLAINTIFF'S MOTION FOR
ISSUANCE OF WRIT OF ATTACHMENT *FIERI FACIAS***

CMS Nomeco Congo Inc. (now known as CMS Nomeco Congo LLC) ("CMS Nomeco") files this Reply in support of its Motion for Extension of Time to File Response to Plaintiff's Motion for Issuance of Writ of Attachment *Fieri Facias* ("the September 1 Motion").

1. On September 29, 2005, counsel for CMS Nomeco learned for the first time, by checking the docket sheet in this case, that on September 21, 2005, Plaintiff Walker International Holdings Limited ("Walker") had filed an opposition to CMS Nomeco's motion for extension of time to respond to the September 1 motion.¹ In this Reply, CMS Nomeco will briefly address the substantive arguments raised by Walker in that response.

2. First, contrary to Walker's arguments, CMS Nomeco has standing to challenge the issuance of the garnishment writs. A garnishee may assert FSIA arguments of a foreign nation, particularly where the foreign nation has not appeared, as held by the Fifth Circuit in a

¹ Plaintiff's filed a certificate of service stating that CMS Nomeco's counsel received the document by virtue of the electronic filing system, despite the fact that CMS Nomeco's counsel was not yet registered to receive notice of the filing. Plaintiff's counsel presumably received an e-receipt advising him that e-service could not be made for that reason. Following that transaction, plaintiff made no effort to serve the document by any other means.

case involving Walker. *See Walker Int'l Holdings Ltd. v. Republic of Congo*, 395 F.3d 229 (5th Cir. 2004). The FSIA issues are to be resolved by the Court prior to the issuance of writs. *Connecticut Bank of Commerce v. Republic of Congo*, 309 F.3d 240, 247 (5th Cir. 2002). For these reasons alone, Walker's standing arguments are meritless. In any event, as shown in the Answering Brief in Opposition to the September 1 Motion, which CMS Nomeco is filing today, CMS Nomeco's interests are directly implicated by issuance of writs of garnishment in light of the Congo court orders that compel CMS Nomeco to deliver royalty oil to the Congo, notwithstanding U.S. garnishment writs and court orders.

3. Second, CMS Nomeco has not "litigated all the issues relating to the garnishment and lost," as alleged by Walker. Walker Response 4. To the contrary, as discussed in the Answering Brief in Opposition to the September 1 Motion, CMS Nomeco litigated an identical garnishment proceeding in the Western District of Texas that had been brought by Af-Cap, Inc., which was represented by the same counsel as Walker, and obtained a dismissal with prejudice of that garnishment action based on one of the arguments set out in this response. See Exhibits D and E to the Response to the September 1 Motion. Af-Cap, Inc. is now appealing that dismissal to the Fifth Circuit Court of Appeals but has obtained no stay of the dismissal.

4. Third, Walker's citation of a Houston federal court's injunction against a sale of CMS Nomeco's working interest is a red herring that has nothing to do with the question of whether this Court should grant an extension of CMS Nomeco's time to respond to the September 1 Motion or should issue a writ of attachment. CMS Nomeco gave the Houston court, the parties, and Walker's counsel thirty days' written notice of its intent to sell its own property (its working interest in the Congo oil concession), for the legitimate business purposes of complying with demands of the Congo to transfer its working interest to a Congolese

company and thereby avoid the risks associated with the Congo's claims that CMS Nomeco is in breach of requirements under the African OHADA treaty and related laws, and avoiding future double liability threatened by litigation filed by judgment creditors of the Congo. This was not a concealed transaction: affected parties were given notice and the opportunity to object. The federal court in Austin made the following findings in connection with the proposed transaction in connection with a motion filed by Af-Cap, submitted by the same law firm that represents Walker in this case:

"Af-Cap has not alleged the existence of any evidence the CMS Entities' proposed sale is being pursued to aid or benefit the Congo. In fact, every bit of the evidence produced by Af-Cap would suggest these entities are merely attempting to cut their own losses, which years of litigation surrounding their interests in the Convention have produced."¹

The Houston federal court decision referenced by Walker did not decide that CMS Nomeco had acted fraudulently, merely that if it had proceeded with the transaction of which it had given advance notice, such a transfer would appear to violate the fraudulent transfer statute. CMS Nomeco has appealed the injunction issued by the Houston federal court. In any event, the circumstances relating to the proposed sale are irrelevant to the question of whether CMS Nomeco is entitled to be heard on the question of whether this Court should issue of a writ of attachment.

CMS Nomeco respectfully requests that the Court grant CMS Nomeco's request for an extension of time to respond to the September 1 Motion, and for the reasons set out in the

¹ See Exhibit F to Answering Brief in Opposition to the September 1 Motion, at 7.

Answering Brief in Opposition to the September 1 Motion, which CMS Nomeco is filing today,
that the Court deny the September 1 Motion.

Respectfully submitted,

OF COUNSEL:

Guy S. Lipe
VINSON & ELKINS L.L.P.
First City Tower
1001 Fannin Street, Suite 2300
Houston, TX 77002-6760
(713) 758-2222

Dated: September 30, 2005

/s/ M. Duncan Grant

M. Duncan Grant (Del. Bar No. 2994)
James C. Carignan (Del. Bar No. 4230)
PEPPER HAMILTON LLP
Hercules Plaza, Suite 5100
1313 N. Market Street
P.O. Box 1709
Wilmington, DE 19899-1709
(302) 777-6500

Attorneys for CMS Nomeco Congo LLC

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2005, the foregoing CMS Nomeco Congo LLC's Reply in Support of Its Motion For Extension for Time to Respond to Plaintiff's Motion for Issuance of Writ of Attachment *Fieri Facias* was electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to counsel as set forth below:

Paul D. Brown, Esq.
Greenberg Traurig, LLP
The Brandywine Building
1000 West Street, Suite 1540
Wilmington, DE 19801

/s/ M. Duncan Grant
M. DUNCAN GRANT (Del. Bar No. 2994)